

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CELESTE WILLIAMS, LAUREN CRUZ,
EMANUEL O'NEALE, BRANDON
STURMAN, LATRESHA HALL,
LAKEISHA MITCHELL, CHRISTINE
BORBELY, JULIE GARIBALDI and
JANINE APONTE, on behalf of themselves
and others similarly situated,

INDEX NO: 07cv3978-LAP

Plaintiffs,

v.

TWENTY ONES INCORPORATED d/b/a
THE 40/40 CLUB, SHAWN CARTER p/k/a
JAY-Z, JUAN PEREZ and DESIREE
GONZALES,

Defendants.

-----x

DECLARATION OF ALEX MASOTTA

I, Alex Masotta, under penalty of perjury, affirm as follows:

1. I am a New York resident and an opt-in plaintiff in the above-captioned matter.
2. I submit this declaration based on personal knowledge unless indicated otherwise.
3. I was employed as a Server at The 40/40 Club sports bar located at 6 West 25th

Street from approximately October 2004 through March 2005.

4. Throughout my employment at The 40/40 Club, I was not paid the minimum wage for each hour that I worked. Instead, I only received tips. Based on conversations with other employees of The 40/40 Club, such as Christine Doyle, Brian Lamkin and Courtney (last name unknown), and what I witnessed, I know that it was the common practice of defendants to not pay its employees who received tips a minimum wage and/or hourly wage for any hours of work.

5. I never received a paycheck from The 40/40 Club during my employment. Therefore, I did not receive anything which reflected my hours of work, the wages I was supposed to receive, or any withholdings for taxes. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know this was the common practice of defendants.

6. During my employment, I regularly worked more than forty hours in a week. However, I was not paid time and a half for hours worked in excess of forty in a week. The 40/40 Club's failure to pay overtime is reflected in the time report attached as Exhibit A. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not pay its employees an overtime premium. For example, I am personally aware that Christine Doyle, Brian Lamkin and Courtney (last name unknown) worked more than 40 hours without being paid overtime at time and a half.

7. The time report attached as Exhibit A also shows that I worked in excess of ten (10) hours per workday for defendants but I was never paid a "spread of hours" premium. I have personally witnessed other employees working shifts of more than ten (10) hours. Based on conversations with these employees, I know it was the common practice of defendants to not pay a "spread of hours" premium for workdays in excess of ten (10) hours.

8. Attached as Exhibit B are my alleged payroll reports provided by defendants and shown to me by my lawyers. I did not receive any payroll reports or pay checks during my employment at The 40/40 Club. Therefore, I never saw these documents prior to this lawsuit. Moreover, I have no reason to believe that these alleged payroll reports are an accurate reflection of my working hours at The 40/40 Club.

9. Attached as Exhibit C are my alleged W-2s provided by defendants and shown to me by my attorneys. I have no reason to believe that these alleged W-2s are an accurate

reflection of what I was actually paid in wages. Furthermore, based on conversations with other employees of The 40/40 Club, including Courtney (last name unknown) and what I witnessed, I know it was the common practice of defendants to not provide W-2s to its employees.

10. I believe that portions of my tips were retained by defendants. The 40/40 Club did not provide us with, or require us to fill out, any sort of tip declaration form. Because The 40/40 Club did not provide us with any records establishing the amount of tips I should have received, I have no independent means of verifying these amounts. However, based on the tips given to me by patrons and what was eventually paid to me by defendants, I believe that I did not receive all of my tips due.

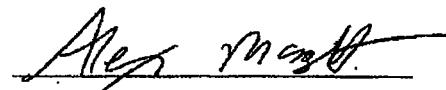
11. If a patron of The 40/40 Club did not sign their credit card receipt, defendants retained the disputed tip for ninety (90) days. I know this happened to Courtney (last name unknown). Based on what I witnessed and the experiences of other employees at The 40/40 Club, I know this was the common practice of defendants.

12. I was not paid any direct wage by The 40/40 Club. Because The 40/40 Club never paid me any direct wages, I was not paid the wages I was owed in a timely manner. Other employees, including Christine Doyle, Brian Lamkin and Courtney (last name unknown), have reported to me that they were not paid any direct wages by The 40/40 Club. Therefore, I know that it was the common practice of defendants to not pay its employees in a timely manner.

13. If a patron left The 40/40 Club without paying the bill, defendants would force its employees to pay the bill with his/her own money. For example, I had a customer walk out without paying and The 40/40 Club required me to pay the full amount of the bill. I know that Christine Doyle, Brian Lamkin and Courtney (last name unknown) all had similar experiences.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 7 day of January, 2008.



Alex Masotta

EXHIBIT A

40/40 NYC
REPORT DATE: 05/29/2007

PAGE: 1
REPORT TIME: 18:12:37.59

Payroll Report for the period from Fri Oct 1, 2004 to Sun Oct 31, 2004

REG regular OTW overtime OTD overtime MSC misc pay SAL salary ADJ adjustment DEL deleted punch * Rate changed in punch
Types of punches not included in regular or overtime calculation: PADJ prev.period adjustment HOL holidays SHDF shift diff.pay

NASOTTA, ALEX	0395	Department	Job	Tips	Pool	Type	Hours	Rate	Total
		FRONT OF HOUSE	SERVER		REG	158.9000	3.300		524.37
					OTD	34.2333	0.000		0.00

Total: 158.9000 regular hours (524.37) and 34.2333 overtime hours(0.00) and 0.0000 other hoursTotal Amt 524.37

+-----Department-----	-----Job-----	-----Day-----	-----Date-----	-----Rate-----	-----Type-----	-----In-----	-----Out-----	-----Hrs-----
FRONT OF HOUSE	SERVER	Fri.	10/1	3.300	5:55p	10:42p	4.78	
		Sat.	10/2	3.300*	11:24a	5:06a	17.70	
		Sun.	10/3	3.300*	11:53a	1:45a	13.87	
		Tue.	10/5	3.300	6:38p	1:57a	7.32	
		Wed.	10/6	3.300*	5:32p	1:40a	8.13	
		Sat.	10/9	3.300	2:39p	2:39p	0.00	
				3.300*	2:39p	4:50a	14.18	
		Sun.	10/10	3.300	7:09p	1:22a	6.22	
		Mon.	10/11	3.300*	5:34p	1:38a	8.07	
		Tue.	10/12	3.300	5:59p	1:42a	7.72	
		Wed.	10/13	3.300	5:46p	1:01a	7.25	
		Thu.	10/14	3.300	5:32p	11:42p	6.17	
		Fri.	10/15	3.300	5:46p	10:30p	4.73	
		Mon.	10/18	3.300*	5:45p	2:05a	8.33	
		Tue.	10/19	3.300	6:08p	1:08a	7.00	
		Wed.	10/20	3.300	6:01p	1:37a	7.60	
		Sat.	10/23	3.300*	2:06p	4:48a	14.70	
		Sun.	10/24	3.300	6:28p	1:11a	6.72	
		Tue.	10/26	3.300	6:06p	1:47a	7.68	
		Thu.	10/28	3.300	9:11p	2:59a	5.80	
		Fri.	10/29	3.300*	5:11p	4:46a	11.58	
		Sat.	10/30	3.300*	7:20p	5:00a	9.67	
		Sun.	10/31	3.300	7:32p	3:27a	7.92	

***Total wages for selected employees: 524.37



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EXHIBIT B

PAYROLLS BY PAYCHECK.

2007 V 150: TWENTY ONE'S INCORPORATED

END- DATE	PAY	HOURS	REG. O.T.	REG.	O.T.	TOTAL EARNINGS	BONUS	TAXES	FEDERAL STATE	LOCAL SHR.	EXCISE TAX	TIP	SALARIES	ADJUSTMENTS	7 H	8 H	9 H	10 H	PERIOD	NET PAY	02/09/08	
1/09/08	3850	8400	15180	8400		23280		10772	5921	1120	3197											
1/10/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/11/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/12/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/13/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/14/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/15/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/16/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/17/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/18/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/19/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/20/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/21/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/22/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/23/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/24/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/25/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/26/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/27/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/28/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
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1/30/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/31/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/01/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/02/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/03/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/04/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/05/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
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1/01/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/02/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/03/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/04/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/05/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
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1/12/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											
1/13/08	3850	8000	15180	8000		23180		10772	5921	1120	3197											

EXHIBIT C

This information is being furnished to the Internal Revenue Service.

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Form W-2 Wage and Tax Statement 2004					
a Control number 0020-Y156		b Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		c Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010	
d Employer's identification number 55-0787351		e Employee's social security number [REDACTED]		f Department of the Treasury - Internal Revenue Service OMB No. 1545-0008	
13 Salaried employee [REDACTED] [REDACTED]		14 Other NYSDI		1 Wages, tips, other compensation 5205.65	
12 See instructions for Box 12		15 State NY		2 Federal income tax withheld 418.75	
16 State wages, tips, etc. 5205.65		17 State income tax 97.56		3 Social security wages 1105.65	
				4 Social security tax withheld 322.75	
		18 Local wages, tips, etc. [REDACTED]		5 Medicare wages and tips 5205.65	
				6 Medicare tax withheld 75.47	
		19 Local income tax [REDACTED]		7 Social security tips 4100.00	
				8 Allocated tips [REDACTED]	
		20 Locality name NY NYC		9 Advance EIC payment [REDACTED]	
				10 Dependent care benefits [REDACTED]	
				11 Nonqualified plans [REDACTED]	

The information is being furnished to the Internal Revenue Service.

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Redacted